

ELECTIONS DEPARTMENT, HARYANA

The 6th July, 1981

No Elec-81/R-3718.—The following decision of the Governor of Haryana is published for general information:—

In exercise of the powers conferred by clause (1) of Article 192 of the Constitution of India and in accordance with the opinion of the Election Commission of India set out in the appendix hereto, the Governor of Haryana is pleased to dismiss the petition, dated 14th November, 1980 of Shri Mohammad Israil, son of Shri Nawaz Khan of Village Ghaghas, P.O. Nagina, Teh. Ferozepur-Jhirka, District Gurgaon, in which it was prayed that Shri Sardar Khan, son of Shri Nawaz Khan of Village Sultanpur Punhana, Teh. Ferozepur-Jhirka, District Gurgaon, may be disqualified from being a member of the Haryana Vidhan Sabha.

APPENDIX

OPINION

This is a reference from the Governor of Haryana seeking opinion of the Commission under article 192(2) of the Constitution on the question of alleged disqualification of Shri Sardar Khan, a sitting Member of Haryana Legislative Assembly, under article 191 (1) (a) of the Constitution for holding an office of profit under the Government of Haryana.

The above question was raised before the Governor of Haryana in terms of article 192 (1) of the Constitution by one Shri Mohammad Israil, resident of Gurgaon, district, in a petition, dated the 14th November, 1980. It was alleged in that petition that Shri Sardar Khan who was elected to the Haryana Legislative Assembly from the Nuh Assembly Constituency at the General election held in June, 1977, had become subject to disqualification under article 191 (1) (a) of the Constitution for holding an office of profit under the Government of Haryana by reason of his appointment as one of the Administrators of the Haryana State Co-operative Supply and Marketing Federation Ltd., on the 6th March, 1979 and subsequently as Chairman of the said Federation on the 2nd April, 1979, by the Registrar, Co-operative Societies, Haryana. It was further alleged that Shri Sardar Khan remained Chairman of the said Federation from 3rd April, 1979 to 10th July, 1979 and drew Rs. 3,255 as honoraria during that period.

The above-mentioned petition was referred to the Commission by the Governor of Haryana on the 17th Dec., 1980.

It is not necessary to refer in any detail to various other contentions of the petitioner and the counter contentions of Shri Sardar Khan in his written statement in view of a material change brought about in the legal position in relation to the present case. After the reference was received by the Commission from the Governor and the enquiry into the alleged disqualification was in progress, the Governor of Haryana issued Haryana Ordinance No. 2 of 1981 on the 22nd January, 1981. This Ordinance has now been replaced by the Haryana State Legislature (Prevention of Disqualification) Amendment Act, 1981 (Act No. 4 of 1981). By the amending Act, Section 3 of the Haryana State Legislature (Prevention of Disqualification) Act, 1974 has been amended retrospectively. Section 3 of the said parent Act provides that none of the offices mentioned therein, in so far as it is an office of profit under the Government of India or the Government of the State of Haryana, shall disqualify the holder thereof for being elected as, or for being, a member of the Legislature of the State of Haryana. By the said Act, the following new clause has been substituted for clause (e) of sub-section (1) of section 3 of the 1974 Act and it is deemed to have always been substituted:—

“(e) Chairman, Vice-Chairman, President, Vice-President, director or member, whether elected, nominated or appointed either by the Union Government or State Government or any of its officers, of any statutory or non-statutory body, whether he is or is not, in receipt of any remuneration including compensatory allowance, during the performance of his duties”.

Thus, the disqualification, if any incurred by the holders of the above offices, has been removed retrospectively. The office held by Shri Sardar Khan in the Haryana State Co-operative Supply and Marketing Federation Ltd., to which he was appointed by the Registrar of Co-operative Societies, Haryana is covered under the above-mentioned provisions of section 3 (1) (e) of the 1974-Act, as amended.

Having regard to the above legal position, I am of the opinion and accordingly hold that Shri Sardar Khan has not become subject to disqualification under article 191 (1) (a) of the Constitution. Accordingly, I tender my opinion to the above effect to the Governor of Haryana under article 192(2) of the Constitution.

New Delhi.
May 2, 1981.

S.L. SHAKDHER,

Chief Election Commissioner
of India.